

HOUSE BILL REPORT

SHB 1768

As Passed Legislature

Title: An act relating to updating definitions applicable to energy conservation projects involving public entities.

Brief Description: Updating definitions applicable to energy conservation projects involving public entities.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Duerr, Fitzgibbon, Berry, Macri, Ramel, Pollet and Hackney).

Brief History:

Committee Activity:

Environment & Energy: 1/13/22, 1/20/22 [DPS].

Floor Activity:

Passed House: 2/10/22, 57-38.

Passed Senate: 3/3/22, 29-18.

Passed Legislature.

Brief Summary of Substitute Bill

- Authorizes state agencies, school districts, and municipalities to deploy distributed energy resources as conservation projects at facilities owned by the agencies.
- Changes definitions applicable to energy conservation projects to allow public agencies to contract for projects and services that reduce energy demand and reduce greenhouse gas emissions.
- Requires the Department of Enterprise Services to issue guidelines for cost-effectiveness determination.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

Staff: Megan McPhaden (786-7114).

Background:

Energy Conservation Projects at State Agency and School District Facilities.

Each state agency and school district is required to implement cost-effective energy conservation improvements at its facilities. A state agency, school district, and state or regional university may implement conservation projects at its facilities independently or with the assistance of the Department of Enterprise Services (Department), in accordance with requirements.

The Department is required to assist state agencies and school districts with identifying, evaluating, and implementing conservation projects at their facilities. Implementing a conservation project may include financing, contracting for energy services, and contracting to sell energy savings from the project to local utilities or the Bonneville Power Administration.

To assist state agencies and school districts with energy conservation projects, the Department must:

- notify these entities of their legal responsibilities for energy conservation projects;
- explain opportunities to develop and finance these projects;
- provide technical and analytical support, including procurement of performance-based contracting;
- review verification procedures for energy savings; and
- assist with financing the projects.

The Department is required to recover its costs to provide assistance from state agencies and school districts and any third parties that may participate in conservation projects.

Financing and Procuring Energy Conservation Projects.

State agencies may partially or fully fund conservation projects through a finance contract. Financing may be provided by a company that contracts with a state agency under an energy savings performance contract. Performance-based contracting refers to contracts for which payment is conditioned on achievement of contractually specified energy savings. This process involves hiring a company to: (1) conduct an energy audit; (2) guarantee a certain level of savings from energy efficiency; (3) provide financing for the energy

efficiency improvements; and (4) install or implement the energy efficiency improvements. Performance-based contracting is the preferred method for completing energy audits and implementing cost-effective conservation measures.

Financing to implement conservation measures may also be carried out with bonds issued by the Washington Economic Development Finance Authority.

Coordination with Local Utilities.

The Department is directed to consult with and cooperate when possible with local utilities that serve the location of a proposed conservation project, and the Department is directed to offer local utilities the initial opportunity to participate in the development of the project. If the local utility expresses interest in the project, the Department is directed to either develop a plan for the coordinated delivery of conservation services and financing or determine whether to participate in the local utility's competitive bidding or solicitation process.

Definitions for Energy Conservation Projects Applicable to State Agencies and School Districts.

"Conservation" means:

- reduced energy consumption or energy cost;
- increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results; and
- reductions in the use or cost of water, wastewater, or solid waste.

Conservation does not include thermal or electric energy production from cogeneration.

"Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville Power Administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

"Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

Municipality Contracting for Conservation and Energy Services.

Municipalities, including cities, counties, and port districts, may negotiate performance-based contracts with a company that offers the best proposal for water conservation, solid waste reduction, or energy equipment and services.

"Energy equipment and services" means energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering,

financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

The Department must maintain a registry of energy service contractors and provide assistance to municipalities to identify available performance-based contracting services.

Any one or more public agency may contract with any one or more other public agencies to perform any government service, with specifications set by the Interlocal Cooperation Act. The Department uses the provisions of this act to engage in performance-based contracts with municipalities.

Summary of Substitute Bill:

State agencies, school districts, and municipalities may deploy distributed energy resources as qualified energy conservation projects at their facilities.

Distributed energy resources include:

- energy efficiency projects that are not cogeneration projects;
- energy storage;
- demand response;
- electric vehicle charging infrastructure; and
- grid-interactive efficient buildings.

Definitions for state agency and school district energy conservation projects are amended so that:

- "conservation" includes reduced energy demand and reduced greenhouse gas emissions;
- "cost-effective" includes conservation activities and benefits achieved instead of energy saved; and
- "public facility" includes a "site improvement" and "other facility."

The definitions applicable to a municipality's conservation and energy equipment and service contracts are amended so that:

- a definition of "conservation" is added, which mirrors the new definition of conservation for state agency and school districts; and
- "conservation projects" are incorporated into the definition of "energy equipment and services."

The Department of Enterprise Services is directed to consult with public agencies to develop and issue guidelines for cost-effectiveness determination.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill updates definitions to the 35-year-old energy services performance contracting statute, which has been used by state and local agencies to implement energy conservation projects that pay for themselves with the energy savings. New opportunities and technologies have become available in the last 35 years that were not envisioned when the statute was first adopted. This bill increases the scope of projects under energy services performance contracting. The new definition of cost-effectiveness means that benefits could be considered like the value of greenhouse gas emissions reductions. The new definition of public facility opens the opportunity for projects like electric vehicle charging infrastructure to be installed in an adjacent parking lot.

(Opposed) None.

(Other) Primary concerns are with the revised definition of conservation, which includes the conventional definition but expands it, which results in the two parts of the definition being in cross-purposes. It's unclear how you reconcile it if a measure meets one part of the definition but not the other. It's also not clear what is included in benefits in the new definition of cost-effectiveness or how you would establish a cost and benefits test to meet this definition.

Persons Testifying: (In support) Representative Davina Duerr, prime sponsor; Stan Price, Northwest Energy Efficiency Council; and Carrie Lee, King County Metro Transit.

(Other) John Rothlin, Avista.

Persons Signed In To Testify But Not Testifying: None.